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SUPREME COURT OF THE UNITED STATES.

October Term, 1899.

Term No. 277.

LOUISA BANHOLZER, PLAINTIFF IN ERROR,

vs.

THE NEW YORK LIFE INSURANCE COMPANY, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

NOTICE OF MOTION TO DISMISS WRIT OF ERROR OR TO AFFIRM.

To Christopher Dillon O'Brien, Esq., Counsel for Plaintiff in Error, St. Paul, Minn.

Sir:—You will please take notice that the defendant in error above named will upon Monday, the 30th day of April, 1900, at the opening of the Supreme Court of the

2 United States on said day, or as soon thereafter as counsel can be heard (or at the hearing of the above entitled cause if a hearing upon the merits thereof shall be sooner called by said Supreme Court), move the said Supreme Court at the court room of said Court in the Capitol in the City of Washington, D. C., to dismiss the writ of error to the Supreme Court of the State of Minnesota heretofore and on the 11th day of April, 1899, sued out of said Supreme Court of the United States by said plaintiff in error, and for such other and further order or relief as to the Court may seem just.

Further take notice that said motion will be based upon the ground that said Supreme Court of the United States has no jurisdiction of said cause above entitled, because:

This cause does not involve a Federal question; that is to say there has not been drawn into question in this cause the validity of any treaty or statute of, or any authority
3 exercised under, the United States, the decision whereon has been against the validity thereof. Nor has there been drawn into question in this cause the validity of any statute of, or any authority exercised under, any State, on the ground that such statute or authority is repugnant to the Constitution, treaties or laws of the United States, the decision whereon has been in favor of the validity thereof. Nor, has any claim been made in this cause of or to any title, right, privilege or immunity under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States, the decision whereon was against the title, right, privilege or immunity so set up or claimed.

Further take notice that at the same time and place, said defendant in error will move said Supreme Court of the United States to affirm the judgment heretofore entered in said
4 cause by said Supreme Court of the State of Minnesota, to review which said writ of error has been sued out as aforesaid, and for such other and further order or relief as to said Supreme Court of the United States may seem just.

Further take notice that said motion to affirm will be based upon the ground that although the record may show that said Supreme Court of the United States has jurisdiction, it is manifest that the question on which such jurisdiction depends is so frivolous as not to need further argument.

Further take notice that said motions will be made upon all the records, files and papers of said cause above entitled, on file in said Supreme Court of the United States, which will be referred to in support thereof.

St. Paul, April 3rd, 1900.

GEO. C. SQUIRES,
F. W. M. CUTCHEON,
Counsel for Defendant in Error.

5 SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

Term No. 277.

LOUISA BANHOLZER, Plaintiff in Error,

vs.

THE NEW YORK LIFE INSURANCE COMPANY, Defendant in Error.

In Error to the Supreme Court of the State of Minnesota.

Motion to Dismiss Writ of Error or to Affirm.

Now comes the New York Life Insurance Company, defendant in error above named, through its undersigned counsel, and

moves the Court to dismiss the writ of error to the Supreme Court of Minnesota heretofore, to-wit, on the 11th day
6 of April, 1899, sued out in this cause, or in case said writ shall not be dismissed, to affirm the judgment heretofore entered in said cause by said Supreme Court of the State of Minnesota, and for such other and further order or relief as to the Court may seem just.

Specification of Grounds of Motion.

The motion to dismiss the writ of error, made above, is based upon the ground that this Court has no jurisdiction to review the judgment of the Supreme Court of Minnesota heretofore entered in this cause, because:

This cause does not involve a Federal question; that is to say, there has not been drawn into question in this cause the validity of any treaty or statute of, or any authority exercised under, the United States, the decision whereon has been against the validity thereof. Nor has there been drawn into
7 question in this cause the validity of any statute of, or any authority exercised under, any State, on the ground that such statute or authority is repugnant to the Constitution, treaties or laws of the United States, the decision whereon has been in favor of the validity thereof. Nor has any claim been made in this cause of or to any title, right, privilege or immunity under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, the decision whereon was against the title, right, privilege or immunity so set up or claimed.

The motion to affirm, made above, is based upon the ground that although the record may show that this Court has jurisdiction, it is manifest that the question on which the jurisdiction depends is so frivolous as not to need further argument.

8 *Statement of Facts.*

The New York Life Insurance Company, defendant in error, on September 16, 1895, issued its policy of insurance on the life of William Banholzer for $20,000, payable to him in twenty years from that date, or in case of his prior death, to Louisa Banholzer, the plaintiff in error. Banholzer was to pay a premium of $1146 in advance and a like sum on September 16th of each year thereafter until twenty full years' premiums had been paid. (*Record p. 35.*)

The policy contained the following provisions:

"If any premium is not paid on or before the day when due, this policy shall become void, and all payments previously made shall remain the property of the company, except as hereinafter provided."

"A grace of one month will be allowed in payment of subsequent premiums after this policy shall have been in force three months, subject to an interest

charge at the rate of five per cent. per annum for the number of days during which the premium remains due and unpaid. During the month of grace this policy remains in force, the unpaid premium, with interest, as above, remains an indebtedness to the company, which will be deducted from the amount payable under this policy if the death of the insured shall occur during the month. (*Record p. 37.*)

Banholzer paid the first premium, but when the second premium became due, and within the one month's grace which was allowed for its payment, Banholzer paid $286 in cash, and for the remainder gave his note, as follows:

"St. Paul, Minn., 9–16, 1896.

Without grace, six months after date, I promise to pay to the order of the New York Life Insurance Company, eight hundred and sixty dollars, at Second National Bank, St. Paul, Minn. Value received, with interest at the rate of five per cent. per annum.

This note is given in part payment of the premium due 9–16–96, on the above policy, with the understanding that all claims to further insurance and all benefits whatever which full payment in cash of said premium would have secured, shall become immediately void and be forfeited to the New York Life Insurance Company, if this note is not paid at maturity, except as otherwise provided in the policy itself. (Signed) Willliam Banholzer." (*Record, p. 39.*)

At the same time with the making of the above note, and as a part of the same transaction, the Insurance Company gave Banholzer a receipt as follows:

"St. Paul, Minn., 10–6–96.

Note six months, after date 9–16–96, due 3–16–97, without grace, made by William Banholzer, payable at Second National Bank, St. Paul, Minn. Received from the owner of policy No. 692,465, $286 in cash, and his note at six months for $860, which continues said policy in force until the 16th day of September, 1897, at noon, in accordance with its terms and conditions, provided the above note is paid at maturity, and this receipt signed by

J. A. Campbell, Cashier." (*Record, p. 39.*)

When this note matured on March 16, 1897, it was surrendered to Banholzer, who then paid $241.50 in cash, and made a new note for $639 with terms exactly similar to the first note, excepting that it was payable in sixty days from its date (*Record, p. 46*). This latter note was never paid.

On May 28, 1897, Banholzer was taken with a fever which continued from that time, with delirious intervals, until he died on July 5, 1897 (*Record, pp. 32, 33*).

On May 28, 1897, and about two hours after Banholzer had taken to his bed, he received a letter from the Insurance Company, as follows:

"New York Life Insurance Company, 346-348 Broadway.

Mr. Wm. Banholzer, New York, May 26, '97.
690 Stewart St., St. Paul, Minn.

Dear Sir:—We have received a report from our branch office returning unpaid the note which was given by you to meet the payment of the overdue premium on your policy No. 692,465.

We regret very much that you did not see your way to meet this note at its maturity, as we are certain that nothing short of an apparent necessity or some misapprehension of fact would compel you to give up your insurance with our company. You are no doubt aware that no other company issues policies which are more liberal in their conditions, or more satisfactory in their results, and we believe it would be very much against your own interests should you fail to do everything in your power to put this policy in force again.

Being a mutual company, we are anxious to do everything possible for the good of the policy holders, and if you will let us know just how much cash you can pay at present we shall take your case under consideration, and you can rest assured that, if it is at all possible to reinstate you on easy terms, we shall have the company do so. Any communication you make will be treated with the utmost confidence, and we will look for an early reply in the enclosed stamped envelope. Very truly yours,

Geo. W. Perkins,
3rd Vice President." (*Record, pp. 33, 39.*)

On June, 18, 1897, Banholzer, through Woodruff, his
12 attorney, sent a draft for $690, being the amount of the note of March 16, 1897, with interest, to the home office of the Insurance Company. This draft was returned with the following letter:

"New York Life Insurance Company, 346-348 Broadway.

Mr. F. G. B. Woodruff,
88 Court Block, St. Paul, Minn.

Dear Sir:—We acknowledge receipt of your letter of the 18th inst. enclosing draft of the Second National Bank of St. Paul, Minn., for $690 on the Western National Bank of New York City, which draft you tender in settlement of the unpaid note of $639, and interest, which note was due May 16th, 1897, accepted in part settlement of the premium due Sept. 16th, 1896, on policy No. 692,465—Banholzer. As policy No. 692,465—Banholzer—stands lapsed on the books of the company for non-payment of the note described above, we return herewith the draft forwarded in your letter of above date. We shall thank you for an acknowledgment of this enclosure. When writing please refer to this letter by file number. Very respectfully,

Hugh S. Thompson,
Comptroller." (*Record, p. 40.*)

Banholzer's application for the policy, which was signed by him, provides that the contract of insurance should be
13 construed according to the laws of the State of New York. (*Record, p. 26*).

At the time of the execution of the policy, there was in force a statute of the State of New York, providing as follows:

"No life insurance corporation doing business in this state shall declare forfeited or lapsed any policy hereafter issued or renewed and not issued upon the payment of monthly or weekly premiums, or unless the same is a term insurance contract for one year or less, nor shall any such policy be forfeited or lapsed by reason of non-payment when due of any premium, interest or installment or of any portion thereof required by the terms of the policy to be paid, unless a written or printed notice stating the amount of such premium, interest or installment or portion thereof due on such policy, the place where it should be paid, and the person to whom the same is payable, shall be duly addressed and mailed to the person whose life is insured or the assignee of the policy, if notice of the assignment has been given to the corporation, at his or her last known post-office address, postage paid by the corporation or by an officer thereof or person appointed by it to collect such premium, at least fifteen and not more than forty-five days prior to the day when the same is payable.

The notice shall also state that unless such premium, interest or installment or portion thereof then due shall be paid to the corporation or to a duly
14 appointed agent or person authorized to collect such premium, by or before the date it falls due, the policy and all payments thereon will become forfeited and void except as the right to a surrender value or paid-up policy, as in this chapter provided.

If the payment demanded by such notice shall be made within its time limited therefor, it shall be taken to be in full compliance with the requirements of the policy in respect to the time of such payment and no such policy shall in any case be forfeited or declared forfeited or lapsed until the expiration of thirty days after the mailing of such notice." Laws 1892, c. 690, § 92. (*Record, pp. 47, 48.*)

The notice required by the New York statute was duly given by the Insurance Company more than fifteen and less than forty-five days prior to September 16, 1896, but no such notice was given within the corresponding period prior to the maturity of either of the notes, although the ordinary bank notice was given prior to the maturity of each of said notes. (*Record, p. 33.*)

The Insurance Company has never returned the note of March 16, 1897, but it did not appear on the trial that a return had ever been demanded or that the Insurance
15 Company had ever attempted to enforce it, or ever asserted any rights under it. The answer alleges that the Insurance Company retains it merely as evidence of the contract between the parties, and for its own protection (*Record, p. 18*).

Proofs of death were seasonably served upon the Insurance Company at its home office.

By stipulation of the parties, the printed record in the case of Conway v. Phœnix Mutual Life Insurance Co. (see *140 N. Y., p. 79*) together with the printed briefs of counsel in said Conway case, were made a part of the record in this case with the same force and effect as if they had been introduced and considered in evidence upon the trial, and it was further stipulated that they should be certified to this Court upon any writ of error which might be taken in the case. (*Record, pp. 113, 114.*)

At the close of plaintiff's testimony, the case was dis-
16 missed by the trial court, and thereupon a motion for a new trial was made and denied, and thereafter an appeal was taken to the Supreme Court of the State of Minnesota, which affirmed the decision of the trial court (*Record, pp. 48, 49 and 50*). Upon suggestion of plaintiff's counsel that the Supreme Court had not distinguished between the facts in the Conway case and those in the case at bar, a re-hearing was had in which the Supreme Court of Minnesota adhered to to its former decision. (*Record, pp. 50, 51 and 52*) (*See* 74 Minn. 387.)

Argument.

The only ground upon which the counsel for the plaintiff in error rests his claim for the jurisdiction of this Court, is under section 1, Article IV of the Constitution of the United States, which requires that "full faith and credit shall be given in each state to the public acts, records and judicial
17 proceedings of every other state;" and under Section 905 of the Revised Statutes, which provides that the records and judicial proceedings of any state or territory, authenticated in the manner specified in the section, "shall

have such faith and credit given to them in every other court within the United States as they have by law or usage in the courts of the state from which they are taken." Therefore, the only question for this Court to determine upon this motion, is, whether the Minnesota courts have in the case at bar failed to give that full faith and credit to the public acts, records or judicial proceedings of another state, which is required by the section of the Constitution above quoted.

An examination of the record will show that the Minnesota court has not only given full faith and credit to the New York Statute, but has construed it in the same
18 manner as the court of last resort in the State of New York, and recognized its binding force and validity as applied to the contract of insurance involved in this cause.

The contention, in the Minnesota courts, of the counsel for the plaintiff in error, was that the notice required by the New York statute (which notice, it is conceded, was given in the case at bar, *Record, p. 33*), should not only have been given at the proper time prior to the due date of the second insurance premium, viz., September 16, 1896, but that the same notice should have been given prior to the maturity of each of the notes which were made by the insured; and that failure to give the statutory notice before the maturity of these notes prevented the operation of the express provision in the notes, "that all claims to further insurance, all benefits whatever which full payment in cash of said premium would have
19 secured, shall be immediately void and forfeited to the New York Life Insurance Co. if this note is not paid at maturity."

The trial court in passing upon the motion to dismiss the case at the close of plaintiff's testimony, says (*Record, p. 34*):

"The only question in my mind about which I have any doubt, is the question whether the New York statute is applicable to the note. The plaintiff contends, as I understand it, that the giving of the note, with the cash payment, was a payment of the premium for the year. Of course, if it was a payment of the premium, then the statute would not apply to the provisions of the note, because payment of, or failure to pay the note would not be a payment of or failure to pay the premium. However that may be, it seems to me that the statute was not designed to apply to such a case, in any event; and if I had any doubt, it seems to me it ought to be resolved by the decision of the court of appeals of the State of New York in the 140th New York reports." (Conway v. Insurance Co., 140 N. Y. 79.)

In the Supreme Court of the State of Minnesota,
20 where by stipulation the whole record, including the briefs, in the Conway case were made a part of the appeal record (*Record, p. 113*), the question of whether the notice required by the New York statute was necessary as to the notes of September 16, 1896, and March 16, 1897, was again considered, and the court decided this case after fully considering the statute, exactly as the New York court had done, in the following language:

"The next and last contention of the plaintiff is that the 'premium notice' required by the statute of New York applied to the note which fell due May 16, 1897, and that the policy could not become lapsed or forfeited for the non-payment of the note without the company's giving the prescribed notice of not less than fifteen nor more than forty-five days prior to the day when the note, by its terms, became payable, notwithstanding the fact that the defendant had already given such notice before the premium became payable the preceding September. Even if the question was *res nova*, I am clearly of the opinion that, upon the facts, this statutory provision has no application to this note. But as my brethren do not agree with me in this, it would be useless for me to
21 enter into any discussion of the reasons for my opinion. The parties mutually agreed that this should be deemed a New York contract and construed according to the laws of that State. The decisions of the highest court of that State as to the construction of such a contract and of the statutes of New York must therefore be accepted as conclusive upon the parties. In Conway v. Insurance Co., 140 N. Y., 79, upon a state of facts and under a statute which in our opinion are in no way distinguishable from those involved in the present case, the court of appeals held that the notice required by statute did not apply to the notes; that the company having served that notice before the premium became due, no further notice was required. Counsel for the plaintiff do not claim that the facts of the two cases are in any respect distinguishable, but they seek to draw a distinction between the language of the statute considered in the 'Conway case' and the statute applicable to the present case. The statute under consideration in the former was Laws of N. Y., 1876, ch. 341, as amended by Laws 1877, ch. 321; the statute applicable to the present case is Laws of N. Y., 1892, ch. 690, sec. 92. This last act appears to be a compilation and revision of all the insurance laws of the State, and sec. 92 but an embodiment (with certain amendments) into the act of the provisions of the act of 1876 as amended in 1877. We have compared the language of the two acts, and are unable to discover any difference between them that at all effects the
22 question now under consideration.

"Even if the 'one month's grace' allowed by the policy for the payment of the premium was applicable to the notes (which I do not think is so), that fact would not aid the plaintiff, for the insured did not offer to pay the last note until thirty-three days after it matured." (Banholzer v. N. Y. Life Ins. Co., 74 Minn. 396.)

And again, upon re-argument of this case in the Supreme Court of Minnesota, the New York statute was further considered and construed, and the former decision of the court adhered to, the following language being used: (*Record, pp. 51, 52.*)

"But we are now equally well satisfied that in what the court said on the subject of notice in the last part of the opinion it intended to and did decide the question upon the assumption that the company was bound by the agent's acceptance of a time note for the premium. This is made quite clear to our minds from an examination of the record and briefs in the case, copies of which have been furnished us by counsel for the defendant.

"While this shows the view of the court of appeals upon the construction of the statute, the doubt in our minds is whether, under the circumstances, it is a decision of the question which is binding on us. See Carroll v. Carroll, 16 How. (U. S.), 275-286 and 287.

"We shall not decide that question, as we are satisfied that if the construction of the New York statute is to be considered as *res integra* the notice required by it was not applicable to the notes given by Banholzer for part of the September premium. The statute was no doubt enacted for the benefit of the insured, recognizing the fact that they were very often people who were neither experts nor systematic in business matters, and therefore liable to overlook or forget the due days of their premiums according to the terms of their policies, issued perhaps years before, laid away and seldom examined or referred to; and while courts are usually liberal in protecting the assured against forfeitures, this is
23 always done in the interest of justice and is no reason why any strained or forced construction should be placed upon this statute which would be unreasonable or operate oppressively upon the insurers or which was

"The premiums on life insurance policies are always payable at stated periods specified in the policy once for all during its life. They are usually payable yearly, sometimes every six months, and occasionally quarter-yearly. It seems to us that it was these periodical due days, as fixed in the policy itself, which the legislature had in mind and to which the statute refers, and not to an extension of time for the payment of a particular premium after it has become due according to the terms of the policy. These extensions are usually and probably always granted at the instance and for the accommodation of the insured. They are always the result of a special and express agreement, which brings the whole matter presently to the mind of the insured. They are necessarily for a comparatively short time.

"They are therefore not within the mischief of the statute; at least not to any considerable extent. The language of the statute is not very apt, if it was designed to include them, and in practice it would often be impracticable, if not impossible, to apply its provisions to such temporary and special extensions. To do so would often produce some very unreasonable results. For
24 example, if the extension was for only fifteen days the insurer would have to give the insured notice of the date when the extension would expire on the very day it was granted. Every extension, although in terms only for one day or for five days, would in effect amount to an extension for at least fifteen days. It can make no difference in principle whether the extension was for two days or two months, or whether a time note was taken for the overdue premium or the extension granted in some other way. For these reasons, the opinion heretofore filed is adhered to."

How can it be said, therefore, that the full faith and credit which must be given to the statutes and judicial proceedings of another State has not been fully complied with in the case at bar? There was no questioning by the Minnesota court of the validity or binding force of the New York statute; there was no dissent as to the proper application of it by the court of appeals of New York. On the contrary, the New York statute had full faith and credit given to it, and the construction placed upon it by the Minnesota court was in exact accordance with the decision of the New York court, both upon the strength of that decision and upon the independent reasoning of the Supreme Court of Minnesota.

This is no new question here, and it has been
25 long the decision of this Court that "the mere construction by the highest court of a state of a statute of another state, without questioning its validity, does not deny to it the full faith and credit which the Constitution and laws of the United States demand, in order to give this Court jurisdiction on writ of error. This is especially true when there are no decisions of the highest court of the latter state in conflict with the construction made by the court of the former state." (Glenn v. Garth, 147 U. S. 360, and cases cited.) In deciding that case, the Chief Justice says (*pp. 368-9*):

"If every time the courts of a State put a construction upon the statutes of another State, this court may be required to determine whether that construction was or was not correct, upon the ground that if it were concludedthat the construction was incorrect, it would follow that the state courts had refused to give full faith and credit to the statutes invoked, our jurisdiction would be enlarged in a manner never heretofore believed to have been contemplated."

See also Lloyd v. Matthews, 155 U. S. 222.

26 This being the rule, and necessarily the rule, of this court, argument seems futile upon so plain a proposition as is presented by this motion. There has been perfect compliance by the courts of Minnesota with the provision of the Constitution and entire accord with the decision of the court of last resort in the sister state; and therefore there is nothing in the case at bar which this court can review, or which gives this court any jurisdiction.

We submit, therefore, that the writ of error should be dismissed with costs.

GEO. C. SQUIRES,
F. W. M. CUTCHEON,
Counsel for Defendant in Error.